

CRIMINAL TAX MANUAL

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Form 1

26 U.S.C. § 6531
Complaint to Toll Statute of Limitations

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA
v.

COMPLAINT

COMPLAINT FOR VIOLATION OF SECTION 7201
INTERNAL REVENUE CODE OF 1986 (26 U.S.C.)

Before [Magistrate Judge's Name], United States Magistrate Judge,
[Judicial District].

The undersigned complainant, being duly sworn, states:

That he [she] is a Special Agent [or Revenue Agent] of the Internal Revenue Service and,
in the performance of the duties imposed on him [her] by _____, he [she] has conducted an
investigation of the Federal income tax liability of [Defendant's Name] of [City], [State], for the
calendar year 20____, by examining the taxpayer's tax return for the calendar year 20____, and
other years; [e.g., by examination and audit of the taxpayer's business and financial books and
records; by identifying and interviewing third parties with whom the taxpayer did business; by
consulting public and private records reflecting the taxpayer's income; and/or by interviewing
third persons having knowledge of the taxpayer's financial condition.]

1 When drafting complaints for violation of other Sections of the Internal Revenue Code, refer to the appropriate
indictment form as a guide.

2 If a fiscal year is involved, substitute "fiscal year ended , [Date], 20____". Fiscal year individual returns must be
filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

3 The bracketed descriptions of the kinds of investigation conducted by the subscribing agent may all be used if they
correctly reflect the facts. Otherwise, the inapposite description(s) should, of course, be deleted. When appropriate,
the description of a different investigative course should be added or substituted based on the facts. See Jaben v.
United States, 381 U.S. 214 (1965).

That based on this investigation, the complainant has personal knowledge that on or about the day of , 20_____, at [City], [State] in the _____ District of _____, [Defendant's Name] did unlawfully and willfully attempt to evade and defeat the income taxes due and owing by him [her] to the United States of America for the calendar year 20___, by preparing and causing to be prepared, and by signing and causing to be signed in the _____ District of _____, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, which was filed with the Internal Revenue Service. In that return, [Defendant's Name] stated that his [her] taxable⁴ [or adjusted gross] income for the calendar year 20___ was \$_____, and that the amount of tax due and owing thereon was the sum of \$_____, when in fact, as he [she] knew, his [her] taxable [or adjusted gross] income for the calendar year⁵ was the sum of \$_____, upon which taxable⁴ [or adjusted gross] income he [she] owed to the United States of America an income tax of \$_____.

6
Title of Subscribing Internal
Revenue Service Officer

Sworn to before me and subscribed in my presence, this _____day of
20_____.

United States Magistrate Judge

⁴ Forms 1040 for some years do not use the phrase "taxable income" or "tax table income." However, what constitutes taxable income as defined in 26 U.S.C. § 63, is actually computed on the appropriate line of the return. That line may vary, and the line on the return showing the amount on which the actual tax was computed should be used.

⁵ If a fiscal year is involved, substitute "fiscal year ended [Date] , 20_____".

⁶ To be sworn to by an Internal Revenue Service Officer having knowledge of the facts.

Form 2

26 U.S.C. § 7201

Individual - Separate Return Attempt to Evade and Defeat Tax Venue in District of Filing

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
)
v.) No. _____
) 26 U.S.C. § 7201
_____)

The grand jury charges:

That on or about the [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully attempt to evade and defeat a large part of the income tax due and owing by him [her] to the United States of America for the calendar year¹ 20____, by filing and causing to be filed with the Director, Internal Revenue Service Center, at [City], [State],² a false and fraudulent U.S. Individual Income Tax Return, Form 1040. In that false return, [Defendant's Name] stated that his [her] taxable income³ for the calendar year 20____ was the sum of \$_____, and that the amount of tax due and owing thereon was the sum of \$_____. In fact, as he [she] then and there knew, his [her] taxable income for the calendar year was the sum of \$_____, upon which taxable income there was owing to the United States of America an income tax of \$_____.⁴

¹ If a fiscal year is involved, substitute "fiscal year ended [Date] , 20____". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

² When appropriate, substitute "by filing and causing to be filed with the person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State]".

³ Forms 1040 for some years do not use the phrase "taxable income" or "tax table income." However, what constitutes taxable income as defined in 26 U.S.C. § 63 is actually computed on the appropriate line of the return. That line may vary, and the line on the return showing the amount on which the actual tax was computed should be used.

⁴If it is determined that unreported income and tax are not to be numerically alleged in the indictment, then substitute "In fact, as he [she] then and there knew, his [her] taxable income for the calendar year was substantially in excess of the amount stated on the return, and, upon the additional taxable income, a substantial additional tax was due and owing to the United States of America." See United States v. Citron, 783 F.2d 307, 314-15 (2d Cir. 1986); United States v. Buckner, 610 F.2d 570, 573 (9th Cir. 1979). Note, however, that the Ninth Circuit has ruled

In violation of Title 26, United States Code, Section 7201.

A True Bill.

Foreperson

United States Attorney

that a "substantial" additional tax is not required; all that is required in that circuit is some additional tax. *United States v. Marashi*, 913 F.2d 724, 736 (9th Cir. 1990).

Form 3

26 U.S.C. § 7201

Individual - Separate Return Attempt to Evade and Defeat Tax Venue in District of Preparation

IN THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7201
_____)

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully attempt to evade and defeat a large part of the income tax due and owing by him [her] to the United States of America for the calendar year¹ 20____, by preparing and causing to be prepared, and by signing and causing to be signed,² a false and fraudulent U.S. Individual Income Tax Return, Form 1040, which was filed with the Internal Revenue Service. In that false income tax return, he [she] stated that his [her] taxable income³ for the calendar year was the sum of \$_____, and that the amount of tax due and owing thereon was the sum of \$_____. In fact, as he [she] then and there knew, his [her] taxable income for the calendar year was the sum of \$_____, upon which taxable income there was owing to the United States of America an income tax of \$_____.⁴

¹ If a fiscal year is involved, substitute "fiscal year ended [Date] , 20____". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

² Where venue is based on mailing, substitute "by mailing and causing to be mailed".

³ Forms 1040 for some years do not use the phrase "taxable income" or "tax table income". However, what constitutes taxable income as defined in 26 U.S.C. § 63 is actually computed on the appropriate line of the return. That line may vary, and the line on the return showing the amount on which the actual tax was computed should be used.

⁴ If it is determined that unreported income and tax are not to be numerically alleged in the indictment, then substitute "In fact, as he [she] then and there knew, his [her] taxable income for the calendar year was substantially in excess of the amount stated on the return, and, upon the additional taxable income, a substantial additional tax was due and owing to the United States of America." See United States v. Citron, 783 F.2d 307, 314-15 (2d Cir.

In violation of Title 26, United States Code, Section 7201.

A True Bill.

Foreperson

United States Attorney

1986); *United States v. Buckner*, 610 F.2d 570, 573 (9th Cir. 1979). Note, however, that the Ninth Circuit has ruled that a "substantial" additional tax is not required; all that is required in that circuit is some additional tax. *United States v. Marashi*, 913 F.2d 724, 736 (9th Cir. 1990).

Form 4

26 U.S.C. § 7201

Individual - Joint Return Attempt to Evade and Defeat Tax Venue in District of Filing

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
26 U.S.C. § 7201

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____ [Defendant's Name], a resident of [City], [State], who during the calendar year^1 20___ was married, did willfully attempt to evade and defeat a large part of the income tax due and owing by him [her] and his [her] spouse to the United States of America for the calendar year 20___, by filing and causing to be filed with the Director, Internal Revenue Service Center, at [City], [State],^2 a false and fraudulent joint U.S. Individual Income Tax Return, Form 1040, on behalf of himself [herself] and his [her] spouse. In that false return, it was stated that the joint taxable income^3 of [Defendant's Name] and his [her] spouse for the calendar year was the sum of \$_____ and that the amount of tax due and owing thereon was the sum of \$_____. In fact, as he [she] then and there knew, their joint taxable income for the

^1 If a fiscal year is involved, substitute "fiscal year ended [Date], 20___". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

^2 When appropriate, substitute "with the person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State]".

^3 Forms 1040 for some years do not use the phrase "taxable income" or "tax table income". However, what constitutes taxable income as defined in 26 U.S.C. § 63 is actually computed on the appropriate line of the return. That line may vary, and the line on the return showing the amount on which the actual tax was computed should be used.

calendar year was the sum of \$_____, upon which joint taxable income there was owing to the United States of America an income tax of \$_____.⁴

In violation of Title 26, United States Code, Section 7201.

A True Bill.

Foreperson

United States Attorney

⁴ If it is determined that unreported income and tax are not to be numerically alleged in the indictment, then substitute "In fact, as he [she] then and there knew, their joint taxable income for the calendar year was substantially in excess of the amount stated on the return, and, upon the additional taxable income, a substantial additional tax was due and owing to the United States of America." See *United States v. Citron*, 783 F.2d 307, 314-15 (2d Cir. 1986); *United States v. Buckner*, 610 F.2d 570, 573 (9th Cir. 1979),. Note, however, that the Ninth Circuit has ruled that a "substantial" additional tax is not required; all that is required in that circuit is some additional tax. *United States v. Marashi*, 913 F.2d 724, 736 (9th Cir. 1990).

Form 5

26 U.S.C. § 7201

Individual - Joint Return Attempt to Evade and Defeat Tax Venue in District of Preparation

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
26 U.S.C. § 7201

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], who during the calendar year¹ 20__ was married, did willfully attempt to evade and defeat a large part of the income tax due and owing by him [her] and his [her] spouse to the United States of America for the calendar year 20__, by preparing and causing to be prepared, and by signing and causing to be signed,² a false and fraudulent joint U.S. Individual Income Tax Return, Form 1040, on behalf of himself [herself] and his [her] spouse, which was filed with the Internal Revenue Service. In that return, it was stated that their joint taxable income³ for the calendar year was the sum of \$_____ and that the amount of tax due and owing thereon was the sum of \$_____. In fact, as he [she] then and there knew, their joint taxable income for the calendar year was the sum of \$_____.

1 If a fiscal year is involved, substitute "fiscal year ended [Date], 20__". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

2 If venue is based on mailing, substitute "by mailing and causing to be mailed".

3 Forms 1040 for some years do not use the phrase "taxable income" or "tax table income". However, what constitutes taxable income as defined in 26 U.S.C. § 63 is actually computed on the appropriate line of the return. That line may vary, and the line on the return showing the amount on which the actual tax was computed should be used.

upon which joint taxable income there was owing to the United States of America an income tax of \$_____.⁴

In violation of Title 26, United States Code, Section 7201.

A True Bill.

Foreperson

United States Attorney

⁴ If it is determined that unreported income and tax are not to be numerically alleged in the indictment, then substitute "In fact, as he [she] then and there knew, their taxable income for the calendar year was substantially in excess of the amount stated on the return, and, upon the additional taxable income, a substantial additional tax was due and owing to the United States of America." See *United States v. Citron*, 783 F.2d 307, 314-15 (2d Cir. 1986); *United States v. Buckner*, 610 F.2d 570, 573 (9th Cir. 1979). Note, however, that the Ninth Circuit has ruled that a "substantial" additional tax is not required; all that is required in that circuit is some additional tax. *United States v. Marashi*, 913 F.2d 724, 736 (9th Cir. 1990).

Form 6

26 U.S.C. § 7201

Individual - Community Property Return Attempt to Evade and Defeat Tax

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
26 U.S.C. § 7201

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully attempt to evade and defeat a large part of the income tax due and owing by him [her] to the United States of America for the calendar year^1 20___, by preparing and causing to be prepared, and by signing and causing to be signed,^2 a false and fraudulent U.S. Individual Income Tax Return, Form 1040, which was filed with the Internal Revenue Service. In that return, he [she] stated that his [her] taxable income ^3 for calendar year, computed on the community property basis, was the sum of \$_____ and that the amount of tax due and owing thereon was the sum of \$_____. In fact, as he [she] then and there knew, his [her] taxable income for the calendar year, computed on

^1 If a fiscal year is involved, substitute "fiscal year ended [Date], 20___". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

^2 If venue is to be placed in the judicial district in which the return was filed, modify this form in accordance with language in Form 2 and related footnote 2. If venue is based on mailing, substitute "by mailing and causing to be mailed".

^3 Forms 1040 for some years do not use the phrase "taxable income" or "tax table income". However, what constitutes taxable income as defined in 26 U.S.C. § 63 is actually computed on the appropriate line of the return. That line may vary and the line on the return showing the amount on which the actual tax was computed should be used.

the community property basis, was the sum of \$_____, upon which taxable income there was owing to the United States of America an income tax of \$_____.⁴

In violation of Title 26, United States Code, Section 7201.

A True Bill.

Foreperson

United States Attorney

⁴ If it is determined that unreported income and tax are not to be numerically alleged in the indictment, then substitute "In fact, as he [she] then and there knew, his [her] taxable income for the calendar year was substantially in excess of the amount stated on the return, and, upon the additional taxable income, a substantial additional tax was due and owing to the United States of America." See *United States v. Citron*, 783 F.2d 307, 314-15 (2d Cir. 1986); *United States v. Buckner*, 610 F.2d 570, 573 (9th Cir. 1979). Note, however, that the Ninth Circuit has ruled that a "substantial" additional tax is not required; all that is required in that circuit is some additional tax. *United States v. Marashi*, 913 F.2d 724, 736 (9th Cir. 1990).

Form 7

26 U.S.C. § 7201

Individual - Community Property Return of Spouse Attempt to Evade and Defeat Tax

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
_____) 26 U.S.C. § 7201

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], who during the calendar year¹ 20____, was married to [Name of Spouse], did willfully attempt to evade and defeat a large part of the income tax due and owing by [Name of Spouse] to the United States of America for the calendar year 20____, by preparing and causing to be prepared, and by signing and causing to be signed,² a false and fraudulent U.S. Individual Income Tax Return, Form 1040, which was filed with the Internal Revenue Service for and on behalf of [Name of Spouse]. In that false return, it was stated that his [her] taxable income³ for said calendar year, computed on the community property basis, was the sum of \$_____ and that the amount of tax due and owing thereon was the sum of \$_____. In fact, as [Defendant's Name] then and there knew, the taxable income of _____

¹ If a fiscal year is involved, substitute "fiscal year ended [Date], 20____". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

² If venue is to be placed in the judicial district in which the return was filed, modify this form in accordance with language in Form 2 and related Footnote 2. If venue is based on mailing, substitute "by mailing and causing to be mailed".

³ Forms 1040 for some years do not use the phrase "taxable income" or "tax table income". However, what constitutes taxable income, as defined in 26 U.S.C. § 63, is actually computed on the appropriate line of the return. That line may vary and the line on the return showing the amount on which the actual tax was computed should be used.

[*Name of Spouse*] for the calendar year, computed on the community property basis, was the sum of \$_____, upon which taxable income³ there was owing to the United States of America an income tax of \$_____.⁴

In violation of Title 26, United States Code, Section 7201.

A True Bill.

Foreperson

United States Attorney

⁴ If it is determined that unreported income and tax are not to be numerically alleged in the indictment, then substitute "In fact, as he [she] then and there knew, [*Name of Spouse*]'s taxable income for the calendar year was substantially in excess of the amount stated on the return, and, upon the additional taxable income, a substantial additional tax was due and owing to the United States of America." See *United States v. Citron*, 783 F.2d 307, 314-15 (2d Cir. 1986); *United States v. Buckner*, 610 F.2d 570, 573 (9th Cir. 1979). Note, however, that the Ninth Circuit has ruled that a "substantial" additional tax is not required; all that is required in that circuit is some additional tax. *United States v. Marashi*, 913 F.2d 724, 736 (9th Cir. 1990).

Form 8

26 U.S.C. § 7201

Individual - Attempt to Evade and Defeat Tax Acts Subsequent to Filing

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
_____) 26 U.S.C. § 7201

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully attempt to evade and defeat a large part of the income tax due and owing by him [her] to the United States of America for the calendar year¹ 20____, by [Describe Act or Acts, e.g., Filing False Financial Statement, or Making False Statements or Representations to Employees of the Internal Revenue Service, etc. See Spies v. United States, 317 U.S. 492 (1943)], for the purpose of concealing additional unreported taxable income received by [Defendant's Name] during the calendar year. On that unreported taxable income, as he [she] then and there knew, there was due and owing to the United States of America an income tax of \$_____ [Insert Amount of Tax Deficiency, Not Total Tax].²

In violation of Title 26, United States Code, Section 7201.

1 If a fiscal year is involved, substitute "fiscal year ended [Date], 20____". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

2 If it is determined that unreported tax is not to be numerically alleged in the indictment, then delete "an income tax of \$_____" and substitute "a substantial additional income tax." See United States v. Citron, 783 F.2d 307, 314-15 (2d Cir. 1986); United States v. Buckner, 610 F.2d 570, 573 (9th Cir. 1979). Note, however, that the Ninth Circuit has ruled that a "substantial" additional tax is not required; all that is required in that circuit is some additional tax. United States v. Marashi, 913 F.2d 724, 736 (9th Cir. 1990).

A True Bill.

Foreperson

United States Attorney

Form 9

26 U.S.C. § 7201

Individual - Spies Evasion, No Return Filed Attempt to Evade and Defeat Tax, Affirmative Acts, Spies v. United States, 317 U.S. 492 (1943)

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
26 U.S.C. § 7201

The grand jury charges:

During the calendar year¹ 20___ [Defendant's Name], a resident of [City], [State], had and received taxable income² in the sum of \$_____. Upon that taxable income, there was owing to the United States of America an income tax of \$_____. Well knowing the foregoing facts, and failing to make an income tax return on or before April 15, 20___,³ as required by law, to any proper officer of the Internal Revenue Service, and pay to the Internal Revenue Service the income tax, [Defendant's Name], on or about [Date(s) of affirmative acts], in the_____District of _____, did willfully attempt to evade and defeat the income tax due and owing by him [her] to the United States of America for the calendar year by [set forth the affirmative act(s) of evasion -- not omissions -- such as concealing and

¹ If a fiscal year is involved, substitute "fiscal year ended [Date] , 20___". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

² For the definition of taxable income, see 26 U.S.C. § 63. Note also 26 U.S.C. § 61, et seq.

³ Note that if April 15th fell on a Saturday, Sunday, or legal holiday, the filing date to charge in the indictment would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note also that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

attempting to conceal from all proper officers of the United States of America his [her] true and correct income].⁴

In violation of Title 26, United States Code, Section 7201.

A True Bill.

Foreperson

United States Attorney

⁴ See *Spies v. United States*, 317 U.S. 492, 499 (1943). In *United States v. Edwards*, 777 F.2d 644, 650 (11th Cir. 1985), the court held that concealing or attempting to conceal income constitutes an affirmative act of tax evasion. See also *United States v. Nelson*, 791 F.2d 336, 338 n.3 (5th Cir. 1986), for a list of cases approving indictments charging concealing and attempting to conceal as an affirmative act of evasion.

Form 10

26 U.S.C. § 7201

Individual - Spies Evasion (No Return Filed) Attempt to Evade and Defeat Tax Husband and Wife Codefendants - Community Property

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
)
 v.) No. _____
) 26 U.S.C. § 7201
 _____)

The grand jury charges:

During the calendar year¹ 20 ____, the defendants [***Husband's Name***] and [***Wife's Name***], who were husband and wife, and who were residents of [***City***], [***State***], had and received taxable income,² computed on the community property basis, in the sum of \$_____ and \$_____, respectively. Upon that taxable income there was owing to the United States of America by the defendants income taxes of \$_____ and \$_____,³ respectively. Well knowing the foregoing facts, and failing to make separate individual income tax returns or a joint individual income tax return on or before April 15, 20____,⁴ as required by law, to any proper officer of the Internal Revenue Service, and pay to the Internal Revenue Service the income taxes, [***Husband's Name***] and [***Wife's Name***], on or about April 15, 20____, in the _____ District of _____, did willfully attempt to evade and defeat the income taxes due and owing⁵

¹ If a fiscal year is involved, substitute "fiscal year ended [***Date***], 20____". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

² For the definition of taxable income, see 26 U.S.C. § 63. Note also 26 U.S.C. §§ 61, *et seq.*

³ Include total tax liability, without regard to wage withholding.

⁴ Note that if April 15th fell on a Saturday, Sunday, or legal holiday, the filing date to charge in the indictment would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note also that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

⁵ If there has been income tax withholding, add before "the income taxes", either "a substantial part of", "a large part of", "a part of", or "a portion of".

by them to the United States of America for the calendar year by [*Set Forth the Affirmative Act(s) of Evasion -- Not Omissions -- Done by or on Behalf of Each Defendant, Such as Concealing and Attempting to Conceal from all Proper Officers of the United States of America his [her] [their] True and Correct Income*⁶; See *Spies v. United States*, 317 U.S. 492, 499 (1943)].

In violation of Title 26, United States Code, Section 7201.

A True Bill.

Foreperson

United States Attorney

⁶ In *United States v. Edwards*, 777 F.2d 644, 650 (11th Cir. 1985), the court held that concealing or attempting to conceal income constitutes an affirmative act of tax evasion. See also *United States v. Nelson*, 791 F.2d 336, 338 n.3 (5th Cir. 1986), for a list of cases approving indictments charging concealing and attempting to conceal as an affirmative act of evasion.

Form 11

26 U.S.C. § 7201

Individual - Attempt to Evade and Defeat the Payment of Tax

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
)
 v.) No. _____
) 26 U.S.C. § 7201
 _____)

The grand jury charges:

That on or about [*Month*] [*Day*], [*Year*], ¹ in the _____ District of _____, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully attempt to evade and defeat the payment of a large part of the income tax due and owing by him [her] to the United States of America for the calendar year² 20____, in the amount of \$_____, by [*Set Forth the Affirmative Acts Constituting the Willful Attempt, Such as the Following: Concealing and Attempting to Conceal From the Internal Revenue Service the Nature and Extent of His [her] Assets and the Location Thereof; Making False Statements to Agents of the Internal Revenue Service; Placing Funds and Property in the Names of Nominees; Placing Funds and Property Beyond the reach of process; etc.*].³

In violation of Title 26, United States Code, Section 7201.

¹ The Seventh Circuit has held that an indictment may use the April 15th return due date, even though not all the acts of evasion of payment occurred on that date. See *United States v. Conley*, 826 F.2d 551, 558-559 (7th Cir. 1987). Moreover, the "attempt" may consist of a course of conduct. If it does, substitute "on or about the day of _____, 20____, and continuing to _____".

² If a fiscal year is involved, substitute "fiscal year ended [*Date*] , 20____"; if more than one year's tax is involved, substitute "for the years through ". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

³In *United States v. Edwards*, 777 F.2d 644, 650 (11th Cir. 1985), the court held that concealing or attempting to conceal income constitutes an affirmative act of tax evasion. See also *United States v. Nelson*, 791 F.2d 336, 338 n.3 (5th Cir. 1986), for a list of cases approving indictments charging concealing and attempting to conceal as an affirmative act of evasion.

A True Bill.

Foreperson

United States Attorney

Form 12

26 U.S.C. § 7201

Corporation, Officer, or Employee - Corporate Return Attempt to Evade and Defeat Corporate Tax

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
)
 v.) No. _____
) 26 U.S.C. § 7201
 _____)

The grand jury charges:

That on or about [*Month*] [*Day*], [*Year*], in the _____ District of _____, [*Defendant's Name*],¹ who was the [*Position Held in Corp.*] of [*Name of Corporation*], a corporation, did willfully attempt to evade and defeat a large part of the income tax due and owing by the corporation to the United States of America for the calendar year² 20____, by preparing and causing to be prepared, and by signing and causing to be signed,³ a false and fraudulent U.S. Corporation Income Tax Return, Form 1120, which was filed with the Internal Revenue Service on behalf of the corporation. In that false return, it was reported that the taxable income of the corporation for the calendar year was the sum of \$_____and that the total amount of tax due and owing thereon was the sum of \$_____. In fact, as he [she] [it] then and there knew, the taxable income of [*Name of Corporation*] for the calendar year 20_____

¹If the corporation is named as the defendant, substitute the name of the corporation.

² If a fiscal year is involved, substitute "fiscal year ended [*Date*] , 20_____".

³ If venue is to be placed in the judicial district in which the return was filed, modify this form in accordance with language in [Form 2](#) and related [Footnote 2](#). If venue is based on mailing, substitute "by mailing and causing to be mailed".

Was the sum of \$_____, upon which taxable income there was due and owing to the United States of America a total tax of \$_____.⁴

In violation of Title 26, United States Code, Section 7201.

A True Bill.

Foreperson

United States Attorney

⁴ If it is determined that unreported income and tax are not to be numerically alleged in the indictment, then substitute "In fact, as he [she] [it] then and there knew, the taxable income of the corporation for the calendar year was substantially in excess of the amount stated on the return, and, upon the additional taxable income, a substantial additional tax was due and owing to the United States of America." See *United States v. Citron*, 783 F.2d 307, 314-15 (2d Cir. 1986); *United States v. Buckner*, 610 F.2d 570, 573 (9th Cir. 1979). Note, however, that the Ninth Circuit has ruled that a "substantial" additional tax is not required; all that is required in that circuit is some additional tax. *United States v. Marashi*, 913 F.2d 724, 736 (9th Cir. 1990).

Form 13

26 U.S.C. § 7201

Corporation - Attempt to Evade and Defeat Corporate Tax Acts Subsequent to Filing

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
_____) 26 U.S.C. § 7201

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name]1 who was the [Position Held in Corp.] of [Name of Corporation], a corporation, did willfully attempt to evade and defeat a large part of the income tax due and owing by the corporation to the United States of America for the calendar year2 20____, by [Describe Act or Acts; e.g., Filing False Financial Statement, Making False Statements and Representations to Employees of the Internal Revenue Service, etc. See Spies v. United States, 317 U.S. 492 (1943)], for the purpose of concealing additional unreported taxable income received by the corporation during the calendar year, on which unreported taxable income, as he [she] [it] then and there knew, there was due and owing to the United States of America an income tax of \$_____. [Insert Amount of Corporation's Tax Deficiency, Not Total Tax].3

In violation of Title 26, United States Code, Section 7201.

1 If the corporation is named as the defendant, substitute the name of the corporation.

2 If a fiscal year is involved, substitute "fiscal year ended , 20_____".

3 If it is determined that unreported tax is not to be numerically alleged in the indictment, then delete "an income tax of \$_____" and substitute "a substantial additional tax". See United States v. Citron, 783 F.2d 307, 314-15 (2d Cir. 1986); United States v. Buckner, 610 F.2d 570, 573 (9th Cir. 1979), cert. denied, 445 U.S. 961 (1980). Note, however, that the Ninth Circuit has ruled that a "substantial" additional tax is not required; all that is required in that circuit is some additional tax. United States v. Marashi, 913 F.2d 724, 736 (9th Cir. 1990).

A True Bill.

Foreperson

United States Attorney

United States of America federal income taxes withheld from wages and social security taxes in the total amount of \$_____.

In violation of Title 26, United States Code, Section 7201.

A True Bill.

Foreperson

United States Attorney

sale of [*Article*] for the quarter was the sum of \$_____. In fact, as he [she] [it] then and there knew, there was due and owing to the United States of America for the quarter, retail dealer's excise tax in the amount of \$_____.

In violation of Title 26, United States Code, Section 7201.

A True Bill.

Foreperson

United States Attorney

Form 16

26 U.S.C. § 7202

Failure to Account for and Pay Over Withholding and F.I.C.A. (Social Security) Taxes

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7202
_____)

The grand jury charges:

[Defendant's Name], a resident of [City], [State], conducted a business as a sole proprietorship under the name [Put in name of business], with its principal place of business in [City], [State]. During the first quarter of the year 20____, ending _____, 20____, he [she] deducted and collected from the total taxable wages of his [her] employees federal income taxes and Federal Insurance Contributions Act taxes in the sum of \$_____. On or about [Month] [Day], [Year], in the _____ District of _____, he [she] did willfully fail to truthfully account for and pay over to the Internal Revenue Service the federal income taxes and Federal Insurance Contributions Act taxes withheld and due and owing to the United States of America for the quarter ending _____, 20_____.

In violation of Title 26, United States Code, Section 7202.

A True Bill.

Foreperson

United States Attorney

1 If taxpayer is a corporation, refer to Form 13 as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law

2 Designate the appropriate quarter.

A True Bill.

Foreperson

United States Attorney

Form 18

26 U.S.C. § 7202

Failure to Pay Over Withholding and F.I.C.A. (Social Security) Taxes Sole Proprietorship

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
_____) 26 U.S.C. § 7202
_____)

The grand jury charges:

[Defendant's Name], a resident of [City], [State], conducted a business as a sole proprietorship under the name _____, with its principal place of business in [City], [State]. During the _____ quarter of the year 20____, ending _____, 20____, [Defendant's Name] deducted and collected from the total taxable wages of his [her] employees, and truthfully accounted for, federal income taxes and Federal Insurance Contributions Act taxes in the amount of \$_____. However, on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], did willfully fail to pay over to the Internal Revenue Service the federal income taxes withheld and Federal Insurance Contributions Act taxes due and owing to the United States of America for the quarter ending _____, 20_____.

In violation of Title 26, United States Code, Section 7202.

1 If taxpayer is a corporation, refer to Form 13 as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law.

2 Designate appropriate quarter.

A True Bill.

Foreperson

United States Attorney

insurance, dental coverage, and group life insurance. For example, [*Name*] caused [*Business Name*] to spend thousands and thousands of dollars for [*List items*] for [*Name*] and members of [*Name*]'s family.

Employment Tax Withholding

5. At all times relevant to this Indictment, [*Business Name*] withheld taxes from its employees' paychecks, including federal income taxes, medicare and social security taxes (often referred to as Federal Insurance Contribution Act or "FICA" taxes). These taxes will be referred to in this Indictment collectively as "payroll taxes."

6. [*Business Name*] was required to make deposits of the payroll taxes to the Internal Revenue Service on a periodic basis. In addition, [*Business Name*] was required to file, following the end of each calendar quarter, an Employer's Quarterly Federal Income Tax Return (Form 941), setting forth the total amount of wages and other compensation subject to withholding, the total amount of income tax withheld, the total amount of social security and Medicare taxes due, and the total tax deposits.

7. As general manager of [*Business Name*], defendant [*Name*] was a "responsible person," that is, he had the corporate responsibility to collect, truthfully account for, and pay over [*Business Name*]'s payroll taxes.

8. Throughout the calendar years [*Year*] and [*Year*], [*Business Name*] withheld tax payments from its employees' paychecks. However, beginning in approximately [*Month Year*], [*Business Name*] made no payments to the Internal Revenue Service, which were due [set forth deposit requirement].

9. Beginning in [*Year*], [*Business Name*] further failed to file quarterly employment tax returns (Forms 941) with the Internal Revenue Service. Each Form 941 was due to be filed at the end of the month following the end of each calendar quarter. For example, the Form 941 for the ____ quarter of [*Year*] was due on or before [*Date*], since the ____ calendar quarter ended on [*Date*].

10. Altogether, during the five calendar quarters alleged in Counts 1-5 of this Indictment, [*Business Name*] failed to account for and pay over approximately \$_____ in payroll taxes, as set forth below:

Fourth Quarter of 20_____	\$ _____
First Quarter of 20_____	\$ _____
Second Quarter of 20_____	\$ _____
Third Quarter of 20_____	\$ _____
Fourth Quarter of 20_____	\$ _____

Counts 1-5

Failure to Account For and Pay Over Employment Tax

Beginning on or about [*Date*], and continuing up to and including on or about [*Date*], in the _____ District of _____, the defendant, [*Name*], did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes withheld and Federal Insurance Contributions Act ("FICA") taxes due and owing to the United States on behalf of [*Business Name*] and its employees, for each of the following quarters, with each calendar quarter constituting a separate count of this Indictment:

Count 1	Fourth quarter of 20_____
Count 2	First quarter of 20_____
Count 3	Second quarter of 20_____
Count 4	Third quarter of 20_____
Count 5	Fourth quarter of 20_____

Each of these counts is a separate violation of Title 26, United States Code, Section 7202.

Foreperson

United States Attorney

Form 20

26 U.S.C. § 7203
Individual Return - Failure to File

I

N THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203

The United States Attorney charges:

During the calendar year1 20____, [Defendant's Name], who was a resident of [City], [State],2 had and received gross income of \$_____.3 By reason of such gross income, he [she] was required by law, following the close of the calendar year 20__ and on or before April 15, 20__,4 to make an income tax return to the Internal Revenue Service Center, at [City], [State], to a person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue, stating specifically the items of his [her] gross income and any deductions and credits to which he [she] was entitled. Well knowing and believing all of the foregoing, he [she] did willfully fail, on or about April 15, 20____, in the _____ District of _____ and elsewhere, to make an income tax return.

1 If a fiscal year is involved, substitute "fiscal year ended _____, 20____." Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

2 If venue is based on defendant's principal place of business, substitute for residence, "whose principal place of business was in [City], [State]."

3 If the amount of gross income is not to be alleged, substitute "had and received gross income in excess of \$_____ [minimum filing requirement]." For definition of gross income, see 26 U.S.C. § 61.

4 If April 15th fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots' Day in Massachusetts, which falls on the third Monday of April. Also note that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

Form 21

26 U.S.C. § 7203

Individual Return - Failure to File Filing Requirement Based on Joint Income of Taxpayer and Spouse where (1) Taxpayer and Spouse were entitled to file a joint return and (2) Had the Same Residence as Their Household at the Close of the Taxable Year

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the calendar year¹ 20____, [Defendant's Name], who was a resident of [City], [State],² and his [her] spouse had and received gross income totaling \$_____.³ By reason of that gross income, he [she] was required by law, following the close of the calendar year 20____ and on or before April 15, 20____,⁴ to make an income tax return to the Internal Revenue Service Center, at [City], [State], to a person assigned to receive returns at the local _____

¹ If a fiscal year is involved, substitute "fiscal year ended _____, 20__." Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

² If venue is based on the defendant's principal place of business, substitute for residence, "whose principal place of business was in [City], [State]."

³ If the amount of gross income is not to be alleged, substitute "had and received gross income in excess of \$_____ [minimum filing requirement]." With respect to the filing requirement for a married individual, 26 U.S.C. 6012(a)(1) provides that "a return shall not be required of an individual . . . (iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount [see 26 U.S.C. § 151(d)] plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home. Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c)." For the definition of gross income, see 26 U.S.C. § 61.

⁴ If April 15th fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots' Day in Massachusetts, which falls on the third Monday of April. Also note that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

office of the Internal Revenue Service at [*City*], [*State*], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue, stating specifically the items of his [her] gross income and any deductions and credits to which he [she] was entitled. Well knowing and believing all the foregoing, he [she] did willfully fail, on or about April 15, 20____, in the _____ District of _____ and elsewhere, to make an income tax return.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

Form 22

26 U.S.C. § 7203

Individual Return - Failure to File Community Property State Alternative

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the calendar year¹ 20____, the defendant, [Defendant's Name], and his [her] spouse, [Spouse's Name], who were husband and wife and were residents of [City], [State],² which is a community property state, had and received gross income computed on the community property basis of \$_____ and \$_____, respectively.³ By reason of such income, the law required the defendant, following the close of the calendar year 20____ and on or before April 15, 20____,⁴ to make an income tax return to the person assigned to receive returns at _____

¹ If a fiscal year is involved, substitute "fiscal year ended _____, 20__." Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

² If venue is based on the defendant's principal place of business, substitute for residence, "whose principal place of business was in [City], [State]."

³ If the amount of gross income is not to be alleged, substitute "had and received gross income in excess of \$_____ [minimum filing requirement]." With respect to the filing requirement for a married individual, 26 U.S.C. 6012(a)(1) provides that "a return shall not be required of an individual . . . (iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount [see 26 U.S.C. § 151(d)] plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home. Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c)." For spouses residing in a community property state, each spouse's gross income is computed on the community property basis. For definition of gross income, see 26 U.S.C. § 61.

⁴ If April 15th fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots' Day in Massachusetts, which falls on the third Monday of April. Also note that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

the local office of the Internal Revenue Service at [*City*], [*State*], or to the Internal Revenue Service Center, at [*City*], [*State*], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue, stating specifically the items of his [her] gross income and any deductions and credits to which he [she] was entitled. Well knowing and believing all the foregoing, the defendant did willfully fail, on or about April 15, 20____, in the _____ District of _____ and elsewhere, to make an income tax return.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

Form 23

26 U.S.C. § 7203
Partnership Return - Failure to File

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the calendar year 20____, [Defendant's Name] conducted a business as a partnership under the name of _____, with its principal place of business at [City], [State]. He [she] therefore was required by law, following the close of the calendar year 20____ and on or before April 15, 20____, to make, for and on behalf of the partnership, a partnership return of income to the Internal Revenue Service Center, at [City], [State], stating specifically the items of the partnership's gross income and the deductions and credits allowed by law. Well knowing and believing all of the foregoing, he [she] did willfully fail, on or about April 15, 20____, in the _____ District of _____ and elsewhere, to make a partnership return.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

1 If a fiscal year is involved, substitute "fiscal year ended _____, 20____".

2 Fiscal year partnership returns must be filed on or before the 15th day of the fourth month following the close of the fiscal year. 26 U.S.C. §§ 6031, 6072(a). Note that if the fifteenth day fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots' Day in Massachusetts, which falls on the third Monday of April. Also note that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

Form 24

26 U.S.C. § 7203
Corporation Return - Failure to File

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
)
 v.) No. _____
) 26 U.S.C. § 7203
 _____)

The United States Attorney charges:

During the calendar year¹ 20____, the defendant, [*Defendant's Name*],² was the [*Position Held in Corporation*] of [*Name of Corporation*], a corporation not expressly exempt from tax, with its principal place of business at [*City*], [*State*]. He [she] [it] therefore was required by law, after the close of the calendar year 20____ and on or before March 15, 20____,³ to make an income tax return, for and on behalf of the corporation, to the Internal Revenue Service Center, at [*City*], [*State*], or to the person assigned to receive returns at the local office of the Internal Revenue Service at [*City*], [*State*], stating specifically the items of the corporation's gross income and the deductions and credits allowed by law. Well knowing and believing all of the foregoing, he [she] [it] did willfully fail, on or about March 15, 20____,³ in the _____ District of _____ and elsewhere, to make an income tax return at the time required by law.

¹If a fiscal year is involved, substitute "fiscal year ended _____, 20__."

² If the corporation is named as the defendant, substitute the name of the corporation.

³ Fiscal year corporation income tax returns must be filed on or before the 15th day of the third month following the close of the fiscal year. 26 U.S.C. § 6072(b). Note that if the fifteenth day fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots' Day in Massachusetts, which falls on the third Monday of April. Also note that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

Form 25

26 U.S.C. § 7203
Failure to File Individual - Information Return

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
_____) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the calendar year 20___, the defendant, [Defendant's Name], made payments of [e.g., Rent, Salaries, Wages, Premiums, Annuities, Compensations, Remunerations, Gains, Profits, or Income] to the persons and in the amounts following:

Table with 3 columns: NAME, ADDRESS, AMOUNT. Three rows of blank lines for entry.

By reason of those payments, [Defendant's Name] was required by law to make, to the Internal Revenue Service, at [City], [State],¹ on or before February 28, 20___,² a return on United States Treasury Department Internal Revenue Service Form(s) 1099, setting forth the information shown in the table above, and on United States Treasury Department Internal Revenue Service Form 1096, setting forth, among other things, the total amount of payments and the number of accompanying Form(s) 1099. Well knowing all of the foregoing, [Defendant's Name] did

1Use Internal Revenue Service Center where Form 1096 was required to be filed. See Instructions for Forms 1096; Treas. Reg. 1.6041-6 (26 C.F.R.).

2 Returns made under section 6041 on Forms 1096 and 1099 for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms.

willfully fail, on or about February 28, 20____,³ in the _____ District of _____ to make such a return.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

³ See footnote 2.

Form 26

26 U.S.C. § 7203

Failure to File Individual - 26 U.S.C. § 6050I Returns Relating to Cash Received in Trade or Business

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The grand jury charges:

During the calendar year 20___, in the [Judicial District], the defendant [Defendant's Name], was the [Position Held in Business] of a business located in [City], [State], under the name of [Name of Business], and was engaged in trade and business as [Type of Business].

On or about [Date of Cash Transaction], defendant [Defendant's Name], in connection with a transaction relating to [Trade or Business - Insert Description of Transaction (e.g., the sale of an automobile to an undercover agent of the Internal Revenue Service)], did receive [Amount involved in cash transaction] in cash from [Name of Person Conducting Transaction] as [Reason for Receipt (e.g., payment for automobile)].¹

¹ Treasury Regulation 1.6050I-1 (26 C.F.R.) provides as follows for multiple payments or installment payments:

(b) Multiple payments. The receipt of multiple cash deposits or cash installment payments (or other similar payments or prepayments) on or after January 1, 1990, relating to a single transaction (or two or more related transactions), is reported as set forth in paragraphs (b)(1) through (b)(3) of this section.

(1) Initial payment in excess of \$10,000. If the initial payment exceeds \$10,000, the recipient must report the initial payment within 15 days of its receipt.

(2) Initial payment of \$10,000 or less. If the initial payment does not exceed \$10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds \$10,000, and report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed \$10,000.

By virtue of his receipt of [*Amount of Cash*] on [*Date of Cash Transaction*], defendant [*Defendant's Name*] was required by law, pursuant to Title 26, United States Code, Section 6050I, and Treas. Reg. §1.6050I-1 (26 C.F.R.), to file with the Internal Revenue Service office specified by the Secretary of the Treasury, at [*City*], [*State*], in the _____ District of _____, within 15 days of his [her] receipt of the [*Amount of Cash*], a return on IRS Form 8300 in the manner and form stated thereon, stating, among other things, the name, address, and taxpayer identification number of the person from whom he [she] received the cash; the amount of cash received; and the date and nature of the transaction.

Well knowing all of the foregoing facts, defendant [*Defendant's Name*] did willfully fail to file the required return with the Internal Revenue Service.

In violation of Title 26, United States Code, Section 7203.

A True Bill.

Foreperson

United States Attorney

(3) Subsequent payments. In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed \$10,000. The report must be made within 15 days after receiving the payment in excess of \$10,000 or the payment that causes the aggregate amount received in the 12- month period to exceed \$10,000. (If more than one report would otherwise be required for multiple cash payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made.) A report with respect to payments of \$10,000 or less that are reportable under this paragraph (b)(3) and are received after December 31, 1989, but before July 10, 1990, is due July 24, 1990.

Form 27

26 U.S.C. § 7203

Failure to File Individual - 26 U.S.C. § 6050I Returns Relating to Cash Received in Trade or Business

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The grand jury charges:

On or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], whose principal place of business was in [City], [State], received a payment in a trade or business, to wit, [identify trade or business], in excess of \$10,000 United States currency, to wit, [amount of currency].2 [Defendant's Name] therefore was required by

2 Treasury Regulation 1.6050I-1 (26 C.F.R.) provides as follows for multiple payments or installment payments:

(b) Multiple payments. The receipt of multiple cash deposits or cash installment payments (or other similar payments or prepayments) on or after January 1, 1990, relating to a single transaction (or two or more related transactions), is reported as set forth in paragraphs (b)(1) through (b)(3) of this section.

(1) Initial payment in excess of \$10,000. If the initial payment exceeds \$10,000, the recipient must report the initial payment within 15 days of its receipt.

(2) Initial payment of \$10,000 or less. If the initial payment does not exceed \$10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds \$10,000, and report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed \$10,000.

(3) Subsequent payments. In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed \$10,000. The report must be made within 15 days after receiving the payment in excess of \$10,000 or the payment that causes the aggregate amount received in the 12- month period to exceed \$10,000. (If more than one report would otherwise be required for multiple cash payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than

law to make a return on United States Treasury Department Internal Revenue Service Form 8300 on or before [*Month*] [*Day*], [*Year*], to the Internal Revenue Service office specified by the Secretary of the Treasury, at [*City*], [*State*], in the _____ District of _____, stating specifically the identity of the individual from whom the cash was received, the person on whose behalf the transaction was conducted, the description of the transaction and method of payment, and the business that received the cash. Well knowing and believing all of the foregoing, [*Defendant's Name*] did willfully fail to make such a return to an office of the Internal Revenue Service at the required time and place.

In violation of Title 26, United States Code, Sections 6050I and 7203, and § 1.6050I-1 (26 C.F.R.).

A True Bill.

Foreperson

United States Attorney

the date by which the first of the separate reports would otherwise be required to be made.) A report with respect to payments of \$10,000 or less that are reportable under this paragraph (b)(3) and are received after December 31, 1989, but before July 10, 1990, is due July 24, 1990.

Form 28

26 U.S.C. § 7203
Individual - Failure to Pay Tax

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the calendar year¹ 20___, [Defendant's Name], who was a resident of [City], [State], had and received taxable income of \$_____, on which taxable income there was owing to the United States of America an income tax of \$_____. He [she] was required by law to pay, on or before April 15, 20___,² that income tax to the Internal Revenue Service Center, at [City], [State], to a person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue. Well knowing all of the foregoing, he [she] did willfully fail, on April 15, 20___², in the _____ District of _____ and elsewhere, to pay the income tax due.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

1 If a fiscal year is involved, substitute "fiscal year ended _____, 20___." Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

2 If April 15th fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. 26 U.S.C. § 7503. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots' Day in Massachusetts, which falls on the third Monday of April. Also note that fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

Form 29

26 U.S.C. § 7203

Failure to File-- Sole Proprietorship or Partnership Employer's Quarterly Return

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the period from [Date] to [Date], inclusive, [Defendant's Name], a resident of [City], [State], was an employer of labor1 and a person required under the provisions of the Internal Revenue Code to make a return of federal income taxes withheld from wages and Federal Insurance Contributions Act (F.I.C.A.) taxes. During that period, he [she] paid wages to his [her] employees which were subject to withholding of federal income taxes and Federal Insurance Contributions Act taxes in the sum of \$_____ and \$_____, respectively. He [she] therefore was required by law, after [Last Day of Period], and on or before [Return Due Date],2 to make an Employer's Quarterly Federal Tax Return, Form 941, to the Internal Revenue Service Center, at [City], [State], to a person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue. Well knowing and believing all of the foregoing, he [she] did willfully fail, in the _____ District of _____ and elsewhere, to make such a return at the time required by law.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

1 If employer is a corporation, refer to Form 13 as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law.

2 Forms 941 are due on the last day of the month that follows the end of the quarter.

Form 30

26 U.S.C. § 7203

Sole Proprietorship or Partnership Employer's Quarterly Return Failure to File - Tabular Form Information

IN THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

1. During the period from [Date] to [Date], inclusive, [Defendant's Name], a resident of [City], [State], was an employer of labor and a person required under the provisions of the Internal Revenue Code to make a return of federal income taxes withheld from wages and Federal Insurance Contributions Act (F.I.C.A.) taxes. During that period he [she] paid to his [her] employees wages which were subject to withholding of federal income taxes and Federal Insurance Contributions Act taxes. He [she] therefore was required by law, after the close of each calendar quarter and on or before each due date, to make an Employer's Quarterly Federal Tax Return, Form 941, to the Internal Revenue Service Center, at [City], [State], to the person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue. Well knowing and believing all of the foregoing, he [she] did willfully fail, in the _____ District of _____ and elsewhere, to make, at the time required by law, an Employer's Quarterly Federal Tax Return, Form 941, for each of the calendar quarters hereinafter set forth during the period from [Date] to [Date].

1 If the employer is a corporation, refer to Form 13 as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law.

2 Forms 941 are due on the last day of the month that follows the end of the quarter.

2. The allegations of paragraph "1." herein are repeated and realleged for Counts I through _____, inclusive, of this Information, as though fully set forth therein:

<u>COUNT</u>	<u>QUARTER ENDED</u>	<u>DUE DATE</u>	<u>TOTAL WAGES</u>	<u>FICA TAXES (EMPLOYER'S & EMPLOYEES')</u>	<u>INCOME TAXES WITHHELD</u>	<u>TOTAL (FICA AND INCOME TAX LIABILITY)</u>
I.	_____	_____	_____	_____	_____	_____
II.	_____	_____	_____	_____	_____	_____
III.	_____	_____	_____	_____	_____	_____

In violation of Title 26, United States Code, Section 7203.

 United States Attorney

Form 31

26 U.S.C. § 7203

Sole Proprietorship or Partnership Excise Tax Return - Failure to File

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)

)

v.)

No. _____

) 26 U.S.C. § 7203

)

The United States Attorney charges:

During the period from [Date] to [Date], [Defendant's Name]¹ conducted a business as a [Sole Proprietorship or Partnership] under the name of _____, with its principal place of business in [City], [State], and sold at retail² [Article], upon which sales there were due and owing to the United States of America retail dealer's³ excise taxes in the amount of \$_____. He [she] therefore was required by law, after [Last Day Of Period], and on or before [Return Due Date], to make a Quarterly Federal Excise Tax Return⁴ to the Internal Revenue Service Center, at [City], [State], to the person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue. Well knowing and believing all of the foregoing, he [she] did willfully fail, in the _____ District of _____ and elsewhere, to make a Quarterly Federal Excise Tax Return at the time required by law.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

¹ If the defendant is a corporation, refer to [Form 13](#) as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law.

² Designate appropriate business, e.g., manufacturing.

³ For other excise taxes, see 26 U.S.C. § 4041, et seq.

⁴ Designate appropriate IRS form.

Form 33

26 U.S.C. § 7204

Furnishing False and Fraudulent Employee's Withholding Statement, Form W-2

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7204
_____)

The United States Attorney charges:

During the calendar year 20___, [Defendant's Name],¹ a resident of [City], [State], employed [Name of Employee], a resident of [City], [State]. [Defendant's Name] was required under the Internal Revenue laws to deduct and withhold federal income taxes and Federal Insurance Contributions Act taxes with respect to the wages of [Name of Employee] and to furnish him [her] on or before January 31, 20___, with a written statement showing the amount of wages paid and taxes deducted and withheld during the calendar year 20___. On or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name] did willfully furnish to [Name of Employee] a false and fraudulent statement, showing that the total wages paid were \$_____, that the income taxes deducted and withheld were \$_____, and that the Federal Insurance Contributions Act taxes deducted and withheld were \$_____, whereas, as [Defendant's Name] then and there knew, the total wages paid were \$_____, the income taxes deducted and withheld were \$_____, and the Federal Insurance Contributions Act taxes deducted and withheld were \$_____.

In violation of Title 26, United States Code, Section 7204.

United States Attorney

¹ If the employer is a corporation, refer to language in Form 13 as a guide in charging appropriate corporate officers with an offense involving violation of a corporation's obligations under the law.

Form 34

26 U.S.C. § 7205
False Withholding Allowance Certificate, Form W-4

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7205
_____)

The United States Attorney charges:

During the calendar year 20___, [Defendant's Name], a resident of [City], [State], was employed by [Name of Employer], a resident of [City], [State]. [Defendant's Name] was required under the Internal Revenue laws to furnish [Name of Employer], on or about the date of the commencement of employment by [Name of Employer], with a signed Employee's Withholding Allowance Certificate, Form W-4, setting forth the number of withholding allowances claimed. On or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name] did willfully supply a false and fraudulent Employee's Withholding Allowance Certificate, Form W-4, to [Name of Employer], on which [Defendant's Name] claimed withholding allowances,¹ whereas, as [Defendant's Name] then and there knew, he [she] was entitled to claim only withholding allowances.²

In violation of Title 26, United States Code, Section 7205.

United States Attorney

¹ Where appropriate, the following language should be substituted: "he [she] claimed exemption from withholding."

² Where appropriate, the following language should be substituted: "he [she] was not exempt from withholding."

COMMENTS

1 The Government does *not* have to prove the number of allowances that the defendant could claim. See *United States v. McDonough*, 603 F.2d 19, 23-24 (7th Cir. 1979).

2 The Fifth Circuit has ruled that "withholding exemptions" and "withholding allowances" are the same in the context of the sufficiency of a Section 7205 indictment. *United States v. Anderson*, 577 F.2d 258, 261 (5th Cir. 1978).

Form 35

26 U.S.C. § 7206(1)

Making and Subscribing a False Return, Statement, or Other Document Venue in District of Filing

IN THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
_____) 26 U.S.C. § 7206(1)
_____)

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully make and subscribe¹ a [Describe Document], which was verified by a written declaration that it was made under the penalties of perjury and which [Defendant's Name] did not believe to be true and correct as to every material matter. That [Describe Document], which was filed with the Director, Internal Revenue Service Center, at [City], [State],² stated [Describe the False Fact(s)], whereas, as he [she] then and there knew [Describe Correct Fact(s)].

In violation of Title 26, United States Code, Section 7206(1).

A True Bill.

Foreperson

United States Attorney

1 An aider and abettor may be jointly charged with the principal under 18 U.S.C. § 2. If this is done, the language "and did willfully aid, abet, assist, and cause to be so made and subscribed" should be inserted after the word "subscribe", and an appropriate reference should be made to 18 U.S.C. § 2 as well as 26 U.S.C. § 7206(1). In a case involving joint conduct, the prosecutor should consider charging a violation of 26 U.S.C. 7206(2) instead of § 7206(1).

2 If the Service Center was not the place of filing, substitute "with a person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State]" or "with a proper officer of the United States".

COMMENT

1 The Seventh Circuit has approved this type of form as sufficiently charging a § 7206(1) offense. *United States v. Marrinson*, 832 F.2d 1465, 1476 (7th Cir. 1987).

2 It is the Tax Division's view that no additional allegations are required for an electronically filed return. Internal Revenue Code (26 U.S.C.) Section 6061(b)(1) provides that the Secretary of the Treasury "shall develop procedures for the acceptance of signatures in digital or other electronic form" and that "until such time as such procedures are in place, the Secretary may . . . (B) provide for alternative methods of signing or subscribing, a particular type or class of return, declaration, statement, or other document required or permitted to be made or written under internal revenue laws or regulations." Subsection (b)(2) of the statute further provides that "[n]otwithstanding any other provision of law, any return, declaration, statement, or other document filed and verified, signed, or subscribed under any method adopted under paragraph (1)(B) shall be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though signed or subscribed."

Form 36

26 U.S.C. § 7206(1)

Making and Subscribing a False Return, Statement, or Other Document Venue in District of Preparation and Signing

IN THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7206(1)
_____)

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully make and subscribe¹ a [Describe Document], which was verified by a written declaration that it was made under the penalties of perjury and which he [she] did not believe to be true and correct as to every material matter. That [Describe Document], which was prepared and signed in the _____ District of _____ and was filed with the Internal Revenue Service, stated that [Describe the False Fact(s)], whereas, as he [she] then and there knew [Describe Correct Fact(s)].

In violation of Title 26, United States Code, Section 7206(1).

A True Bill.

Foreperson

United States Attorney

¹ An aider and abettor may be jointly charged with the principal under 18 U.S.C. § 2. If this is done, the language "and did willfully aid, abet, assist, and cause to be so made and subscribed" should be inserted after the word "subscribe" and appropriate reference should be made to 18 U.S.C. § 2, as well as 26 U.S.C. § 7206(1). In a case involving joint conduct, the prosecutor should consider charging a violation of 26 U.S.C. 7206(2) instead of § 7206(1).

COMMENT

1 The Seventh Circuit has approved this type of form as sufficiently charging a § 7206(1) offense. *United States v. Marrinson*, 832 F.2d 1465, 1476 (7th Cir. 1987).

Form 37

26 U.S.C. § 7206(1)

Making and Subscribing a False Return False Amount Not Specified - Open Ended Indictment

IN THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7206(1)
_____)

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully make and subscribe¹ a [joint] U.S. Individual Income Tax Return,² for the calendar year³ 20____, which was verified by a written declaration that it was made under the penalties of perjury and which he [she] did not believe to be true and correct as to every material matter. That income tax return, which was filed with the Internal Revenue Service,⁴ reported [State Each False Item of Income Reported, e.g., Dividend Income in the Amount of \$_____, Interest Income in the Amount of \$_____,], whereas, as he [she] then and there well knew he [she] received [State Each False Item But Not Amount, e.g., Interest Income and Dividend Income] in addition to the amount stated in the return.

In violation of Title 26, United States Code, Section 7206(1).

1 An aider and abettor may be jointly charged with the principal under 18 U.S.C. § 2. If this is done, the language "and did willfully aid, abet, assist, and cause to be so made and subscribed" should be inserted after the word "subscribe", and appropriate reference should be made to 18 U.S.C. § 2 as well as 26 U.S.C. § 7206(1). In a case involving joint conduct, the prosecutor should consider charging a violation of 26 U.S.C. 7206(2) instead of section 7206(1).

2 Where appropriate, substitute correct tax return, e.g., U.S. Corporation Income Tax Return.

3 If a fiscal year is involved, substitute "fiscal year ended [Date], 20__". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

4 If venue is to be placed in the district of filing, modify this form in accordance with language in Form 35.

A True Bill.

Foreperson

United States Attorney

Form 38

26 U.S.C. § 7206(1)
Making and Subscribing a False Return Failure to Disclose a Business

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
)
v.) No. _____
) 26 U.S.C. § 7206(1)
_____)

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____,
[Defendant's Name], a resident of [City], [State], did willfully make and subscribe a [joint] U.S.
Individual Income Tax Return, for the calendar year 20___,^1 which was verified by a written
declaration that it was made under the penalties of perjury. [Defendant's Name] did not believe
the return, which was filed with the Internal Revenue Service,^2 to be true and correct as to every
material matter in that the return failed to disclose that he [she] was engaged in the operation of a
business activity from which he [she] derived gross receipts or sales and received income.
[Defendant's Name] then and there well knew that he [she] was required by law and regulation
to disclose the operation of this business activity, the gross receipts or sales he [she] derived
therefrom, and the income from the business activity.

In violation of Title 26, United States Code, Section 7206(1).

A True Bill.

Foreperson

United States Attorney

^1 If fiscal year is involved, substitute "fiscal year ended [Date] , 20___". Fiscal year individual returns must be filed
on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

^2 If venue is to be placed in the district of filing, modify this form in accordance with language in Form 35.

Form 39

26 U.S.C. § 7206(1)

Individual - 26 U.S.C. 6050I Returns Relating to Cash Received in Trade or Business Filing False Return

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No.
_____) 26 U.S.C. § 7206(1)

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully make and subscribe a return on United States Treasury Department Internal Revenue Service Form 8300, for a cash payment in excess of \$10,000 received on [Date], which was verified by a written declaration that it was made under the penalties of perjury. [Defendant's Name] did not believe that the return on United States Treasury Department Internal Revenue Service Form 8300, which was filed with the Internal Revenue Service, was true and correct as to every material matter in that the return reported [State Each False Item Reported, e.g., Name of Payor, Cash Received in the Amount of \$_____]. In fact, as he [she] then and there well knew he [she] received [State Each False Item But Not Amount, e.g., Name of Payor, Cash Received in Excess of Amount Reported], in addition to that stated on the Form 8300.

In violation of Title 26, United States Code, Sections 6050I and 7206(1), and 26 Code of Federal Regulations, Section 1.6050I-1.

A True Bill.

Foreperson

United States Attorney

<u>COUNT</u>	<u>DATE OF OFFENSE</u>	<u>TAXPAYER</u>	<u>CALENDAR TAX YEAR</u>	<u>FALSELY CLAIMED ITEM¹</u>	<u>AMOUNT CLAIMED</u>
--------------	------------------------	-----------------	--------------------------	---	-----------------------

- I.
- II.
- III.

In violation of Title 26, United States Code, Section 7206(2).

A True Bill.

Foreperson

United States Attorney

¹ Where the fraudulent deductions (generally itemized deductions) consist of alleged payments to individuals or organizations, list each fraudulent payment, rather than totaling such payments in the deduction category under which they were claimed on the return. For example, list "Medical Expenses Dr. Jones-\$500; Dr. Smith-\$500," not, "Medical Expenses \$1,000." This will prevent a defense that additional, unclaimed deductions in the same deduction category are available to offset the false items.

Form 43

26 U.S.C. § 7206(5)(A)

Concealment of Assets in Connection with a Compromise or Closing Agreement

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7206(5)(A)
_____)

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____,
[Defendant's Name], a resident of [City], [State], in connection with an offer in compromise^1
relating to his [her] liability for [Type of Tax] taxes due and owing by him [her] to the United
States of America for the calendar year(s),^2 did willfully conceal from [Specify Particular
Officer, with Job Title] and all other proper officers and employees of the United States,
[Describe Property Belonging to Taxpayer or Other Person Liable for the Tax].

In violation of Title 26, United States Code, Section 7206(5)(A).

A True Bill.

Foreperson

United States Attorney

^1 Where appropriate, substitute "a compromise"; or "a closing agreement"; or "an offer to enter into a closing agreement".

^2 If fiscal year is involved, substitute "fiscal year(s) ended , 20__". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

Form 44

26 U.S.C. § 7206(5)(B)

Withholding, Falsifying, or Destroying Records or Making a False Statement in Connection with a Compromise or Closing Agreement

IN THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7206(5)(B)
_____)

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], in connection with an offer in compromise¹ relating to his [her] liability for [Type of Tax] taxes due and owing by him [her] to the United States of America for the calendar year(s),² did willfully [(receive) (withhold) (destroy) (mutilate) or (falsify), Describe Book, Document, or Record Involved].³

In violation of Title 26, United States Code, Section 7206(5)(B).

A True Bill.

Foreperson

United States Attorney

¹ Where appropriate, substitute "a compromise"; or "a closing agreement"; or "an offer to enter into a closing agreement".

² If fiscal year is involved, substitute "fiscal year(s) ended [Date], 20__". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

³ Where false statement is the crime, substitute "make a false statement to [Name Appropriate Official, with Job Title], at [Place], [Location], wherein [Defendant's Name] stated that [Describe False Statement Relating to the Estate or Financial Condition of Taxpayer], whereas, as he [she] then and there knew, [Describe Correct Fact(s) Relating to False Statement]".

Form 47

26 U.S.C. § 7207

False Documents Submitted to I.R.S. Venue in District Where Documents Submitted Tabular Form Information

IN THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7207
_____)

The United States Attorney charges:

1. That on or about the dates hereinafter specified, in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully deliver and disclose by submitting to an Officer(s) of the Internal Revenue Service, United States Treasury Department, at [Place], [Location], documents described below.2 The defendant then and there knew that the documents were fraudulent and false as to a material matter, as set forth below.

2. The allegations of paragraph "1." are repeated and realleged in Counts I through _____, inclusive, of this Information, as though fully set forth therein.

Table with 4 columns: COUNT, DATE OF OFFENSE, DESCRIPTION OF DOCUMENT, FALSITY. Rows I, II, III.

In violation of Title 26, United States Code, Section 7207.

United States Attorney

NOTES

¹ Department policy generally limits Section 7207 prosecutions to cases involving the falsification of documents other than U.S. tax returns.

² A separate count should be charged for each false document.

Form 48

26 U.S.C. § 7207

False Documents Submitted to I.R.S. Venue in District of Mailing Tabular Form Information

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7207
_____)

The United States Attorney charges:

1. That on or about the dates hereinafter specified, in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully deliver and disclose by mailing and causing to be mailed, to an Officer(s) of the Internal Revenue Service, United States Treasury Department, documents described below.2 The defendant then and there knew that the documents were fraudulent and false as to a material matter, as set forth below.

2. The allegations of paragraph "1." are repeated and realleged in Counts I through ____, inclusive, of this Information, as though fully set forth therein.

Table with 4 columns: COUNT, DATE OF OFFENSE, DESCRIPTION OF DOCUMENT, FALSITY. Rows I, II, III.

In violation of Title 26, United States Code, Section 7207.

United States Attorney

NOTES

¹ Department policy generally limits Section 7207 prosecutions to cases involving the falsification of documents other than U.S. tax returns.

² A separate count should be charged for each false document.

Form 49

26 U.S.C. § 7210

Failure to Appear in Response to Summons

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)	
)	
v.)	No. _____
)	26 U.S.C. § 7210
_____)	

The United States Attorney charges:

On or about [*Month*] [*Day*], [*Year*], in the _____ District of _____, [*Defendant's Name*], a resident of [*City*], [*State*], was required under the Internal Revenue laws, by reason of being duly summoned, to appear to testify¹ at on that date at the office of _____. Well knowing and believing all of the foregoing, he [she] willfully failed to appear to testify¹ at the time and place required by the summons.

In violation of Title 26, United States Code, Section 7210.

United States Attorney

¹ Where appropriate, add or substitute "and produce [*Describe Documents Summoned*]".

which [Defendant's Name] claimed money rewards for the reporting of alleged violations of the tax laws allegedly committed by these individuals; and (7) filing with the Internal Revenue Service a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for the calendar year 1989, which claimed a tax refund due of \$_____, whereas [Defendant's Name] was not entitled to a tax refund in this amount.]

In violation of Title 26, United States Code, Section 7212(a).

A True Bill.

Foreperson

United States Attorney

Form 51

26 U.S.C. § 7215
Failure to Make Trust Fund Deposit After Notice

THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7215
_____)

The United States Attorney charges:

1. During the period [Date], 20__, to [Date], 20__, in the _____ District of _____, [Defendant's Name] was an employer of labor^1 required under the provisions of the Internal Revenue Code to collect, account for, and pay over to the United States federal income taxes and Federal Insurance Contributions Act (F.I.C.A.) taxes withheld from wages.

2. [Defendant's Name] did fail at the time and in the manner prescribed by the Internal Revenue Code, and Regulations promulgated pursuant thereto, to collect, truthfully account for, and pay over and to make deposits and payments of the said withheld taxes to the United States, which were due and owing for the quarters ending [Date] 20__, [Date] 20__, [Date, 20__, and [Date], 20__.^2

3. On [Date], 20__, [Defendant's Name] was notified of such failure by notice delivered in hand to him [her] as provided by Title 26, United States Code, Section 7512. The notice advised him [her] that he [she] was required to collect the aforesaid taxes that became collectible after delivery of the notice and, not later than the end of the second banking day after

^1 If the employer is other than a sole proprietorship (e.g., a corporation, partnership, or joint venture), the relationship of the defendant to the employer-entity, which makes him the responsible person, should be alleged in paragraphs 1, 2, and 3, by substituting "[Defendant's Name], who was the [Position Held in Company] of [Name of Company], a [Type of Company, e.g., Corporation, Partnership, etc.], and an employer of labor".

^2 Quarters prior to notice for which there was a failure to collect, account for, and pay over federal income and F.I.C.A. taxes withheld from wages.

the collection, to deposit the taxes into a separate bank account established by him [her] in trust for the United States. The notice further advised [*Defendant's Name*] that the taxes were required to be kept in that bank account until paid over to the United States.

4. Within the _____ District of _____, [*Defendant's Name*] unlawfully failed to comply with the provisions of Title 26, United States Code, Section 7512, in that, after receiving delivery of the notice referred to in paragraph "3.", he [she] paid wages and was required to collect and deposit the said taxes, but failed to deposit said taxes into a separate bank account in trust for the United States, by the dates and in the amounts specified below:

<u>COUNT</u>	<u>DATE WAGES PAID</u>	<u>DATE DEPOSIT REQUIRED</u>	<u>AMOUNT OF DEPOSIT REQUIRED</u>
I.	_____	_____	\$ _____
II.	_____	_____	\$ _____
III.	_____	_____	\$ _____
IV.	_____	_____	\$ _____

In violation of Title 26, United States Code, Section 7215.

United States Attorney

Form 54

18 U.S.C. § 286/287

Conspiracy to File False Claims for Refund/False Claims for Refund

NOTE: This indictment provides sample language to charge a violation of 18 U.S.C. 286 in a commonly encountered type of Electronic Filing (ELF) scheme. Modification of the language will be necessary in cases involving different fact patterns. Modification of the format used may be desirable to conform to local practice.

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 18 U.S.C. § 286:
) Conspiracy; 18 U.S.C.
_____) § 287: False Claim to
_____) a Government Agency
_____)

The grand jury charges:

COUNT ONE

[18 U.S.C. § 286]

Beginning in or about [month], 20___, and continuing until in or about [month], 20___, within the _____ District of _____, (and elsewhere, if appropriate) defendants [name(s) of defendant(s)], and others known and unknown to the grand jury, agreed, combined, and conspired to defraud the United States by obtaining and aiding to obtain the payment or allowance of [a] false, fictitious and fraudulent claim[s] on behalf of themselves and others by submitting false claims for income tax refund with the United States Department of Treasury through the Internal Revenue Service.

The conspiracy was accomplished, in part, by the following acts:

[Describe how the conspiracy was accomplished or intended to be accomplished. Some examples of acts undertaken follow.]

1. Defendants ***[insert relevant names]*** recruited customers into the ***[fraudulent Form 1099-OID]*** scheme through seminars and one-on-one consultations.
2. Defendants ***[insert relevant names]*** charged each scheme customer up to ***[\$x,xxx]*** ***[describe what customer got for the fee; avoid referring to membership]***.
3. Defendants ***[insert relevant names]*** paid a fee to others for referring a paying customer.
4. Defendants ***[insert relevant names]*** required that scheme customers pay them a portion of the fraudulently-obtained refunds.
5. Defendants ***[insert relevant names]*** required that each scheme customer provide specific paperwork, including but not limited to, copies of his or her driver's license and social security card; a voided check; IRS transcripts and tax returns for specific years; a signed IRS Form 8821, granting Defendant permission to inspect his/her IRS records; and a promissory note and trust deed for each piece of real property that the customer owned.
6. Defendants ***[insert relevant names]*** electronically transmitted the fraudulent ***[Form 1099-OID]*** information to the IRS.

[Other schemes may include such acts as using stolen Social Security Numbers or claiming as dependents individuals who are not dependents of the filer. Include additional acts if warranted.]

In violation of Title 18, United States Code, Section 286.

COUNTS TWO THROUGH TEN
[18 U.S.C. §§ 287, 2]

The grand jury charges:

That on or about the dates listed below, within the _____ District of _____, [Defendants' Names] made and presented and caused to be made and presented to the Internal Revenue Service, an agency of the United States Department of the Treasury, claims against the United States for payment of a refund of taxes, which they then and there knew to be false, fictitious, and fraudulent. [Defendant's Name] made the claims by preparing and causing to be prepared,¹ and presenting and causing to be presented to said agency, U.S. Individual Income Tax Returns, Forms 1040², for the individuals and amounts described below knowing that the claim was false, fictitious, and fraudulent in that the named individual was not entitled to the refund which was being requested.

TAX REFUND AMOUNT

<u>COUNT</u>	<u>NAME</u>	<u>DATE</u>	<u>YEAR</u>	<u>CLAIMED</u>
TWO	_____	__/__/__	_____	\$ _____
THREE	_____	__/__/__	_____	\$ _____
FOUR	_____	__/__/__	_____	\$ _____
FIVE	_____	__/__/__	_____	\$ _____
SIX	_____	__/__/__	_____	\$ _____
SEVEN	_____	__/__/__	_____	\$ _____
EIGHT	_____	__/__/__	_____	\$ _____
NINE	_____	__/__/__	_____	\$ _____
TEN	_____	__/__/__	_____	\$ _____

In violation of Title 18, United States Code, Section 287 and Section 2.

¹ If venue is to be placed in the district of filing, modify this form in accordance with language in [Form 2](#) and related [footnote 2](#). If venue is based on mailing, substitute "by mailing and causing to be mailed".

² The appropriate IRS form should be designated here -- e.g., U.S. Corporation Income Tax Return, Form 1120.

Form 55

18 U.S.C. § 371

Conspiracy to Defraud United States Impede And Impair I.R.S. -- Klein Conspiracy

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 18 U.S.C. § 371
_____)

The grand jury charges:

THE CONSPIRACY3

1. From on or about [beginning date], the exact date being unknown to the Grand Jury, and continuing thereafter up to and including the date of this indictment4, in the _____ District of _____,

[first defendant's name],

[second defendant's name],

[third defendant's name],

defendants herein, did unlawfully, voluntarily, intentionally and knowingly conspire, combine, confederate, and agree together and with each other and with other individuals both known and unknown to the Grand Jury to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful Government functions of the Internal Revenue Service of

3It is suggested that the paragraphs of the indictment be numbered sequentially from beginning to end even though the indictment will have different sections. This will eliminate confusion when reference is made to a particular portion or paragraph of the indictment.

4 Substitute appropriate date if the conspiracy ended before the date of the indictment.

the Treasury Department in the ascertainment, computation, assessment, and collection of the revenue: to wit, income taxes [*or other relevant taxes, e.g., excise taxes*].⁵

PARTIES, PERSONS AND ENTITIES

At all relevant times,

2. [*E.g., Defendants John Smith and Tom Smith were president and vice-president of Smith, Inc., a corporation, and each owned 50% of the stock of Smith, Inc.*]

3. [*E.g., Defendant Sam Jones was a certified public accountant who prepared the income tax returns of Smith, Inc., a corporation, and its officers.*]

4. [*E.g., Smith, Inc., was a Massachusetts corporation, formed in 1975 by defendant John Smith to market real estate limited partnerships.*]

5. [*Continue to describe all defendants and all persons and entities that are significant to an understanding of the conspiracy.*]

MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

6. [*Describe manner or means, e.g., To divert corporate receipts to their own use, defendant John Smith presented false books and records to the corporate accountant for use in preparing the corporate income tax returns of Smith, Inc., for the calendar years 1988, 1989, and 1990.*]

⁵ Strike the remaining portion of this paragraph beginning with the phrase "to defraud the United States" and substitute appropriate language if conspiracy is to commit a substantive offense. *E.g.*, "to commit offenses against the United States: to wit, to violate Title 26, United States Code, Sections 7201 and 7206(1)." In the case of a conspiracy to commit a substantive offense, this paragraph must allege that the defendant had the intent required for the substantive offense. *United States v. Bedford*, 536 F.3d 1148, 1155 (10th Cir. 2008).

The Tax Division advises against charging a conspiracy to defraud and a conspiracy to commit substantive tax offenses in the same count or indictment. This is rarely necessary and tends to unduly complicate the trial, especially with respect to the jury instructions.

7. [E.g., *By backdating documents so as to conceal from the Internal Revenue Service defendant John Smith's ownership and interest in real property.*]

8. [E.g., *By making false statements and representations to agents of the Internal Revenue Service for the purpose of concealing the interest of defendant John Smith in property, stock, etc.*]

9. [Continue to describe general manner and means used to carry out the conspiracy.]⁶

OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts were committed in the _____ District of _____, and elsewhere:

10. [E.g., *On or about July 20, 1988, defendant Tom Smith and Jane Smith met in the offices of Smith Realty Co. at 33 Main Street, Boston, Massachusetts, and discussed how to backdate real estate contracts.*]

11. [E.g., *In or about the week of July 20, 1988, defendants John Smith and Tom Smith went to the A & B Bank in Boston, Massachusetts, and removed cash from the safe deposit box of defendant John Smith.*]

In violation of Title 18, United States Code, Section 371.

A True Bill.

Foreperson

United States Attorney

⁶ When charging a *Klein* conspiracy (and not a conspiracy to commit a substantive offense), the means must include deceit, craft, and/or trickery, or at least means that are dishonest. *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924).

Form 58

18 U.S.C. § 1001

Falsify, Conceal, or Cover Up by Trick, Scheme, or Device a Material Fact

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 18 U.S.C. § 1001
_____)

The grand jury charges:

From on or about [Month] [Day], [Year], to on or about [Month] [Day], [Year], in the
_____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully
and knowingly falsify, conceal, and cover up, by trick, scheme, and device a material fact, in a
matter within the jurisdiction of the executive, legislative, or judicial branch of the Government
of the United States. [Defendant's Name][Describe Nature of Scheme or Device to Conceal,
Including Name and Title of any IRS Employee to Whom False Statement(s) or
Representation(s) Were Made; Nature of False Statement(s) or Representation(s); Place and
Location Where False Statement(s) or Representation(s) Were Made; and/or Specific False
Document(s) Submitted],1 well knowing [Describe Correct Facts Relating to False
Statement(s), Representation(s), and/or Document(s)].2

In violation of Title 18, United States Code, Section 1001.

A True Bill.

Foreperson

United States Attorney

1 E.g., "by representing to John Smith, Revenue Officer, Internal Revenue Service, at 33 Main Street, Boston,
Massachusetts, that the deductions claimed for contributions were in the amount of \$ _____ and that eight checks
drawn on account number _____ at _____ Bank were issued to make the contributions in the amounts
represented on said checks".

2 E.g., "the said eight checks had been altered and were false as to (amounts, payees, dates, etc.)".

Form 59

18 U.S.C. § 1956(a)(1)(A)(ii)
Laundering of Monetary Instruments

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 18 U.S.C. §§ 1956(a)(1)(A)(ii)
) and 2

The grand jury charges:

On or about [Date], in the _____ District of _____, [Defendant(s) Name(s)] did knowingly and willfully conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, [Description of Financial Transaction], which involved the proceeds of a specified unlawful activity, that is [Describe Specified Unlawful Activity]. Defendant acted with the intent to engage in conduct constituting a violation of [26 U.S.C. § 7201] [26 U.S.C. § 7206]1 to wit, [Describe Conduct]. While conducting and attempting to conduct that financial transaction, [Defendant's Name] then and there knew that the property involved in the financial transaction, that is [Funds]2 [Monetary Instruments]3 in the amount of \$ _____, represented the proceeds of some form of unlawful activity.

All in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(ii) and 2.

A True Bill.

Foreperson

1Choose one or both. If both are used, set forth in the conjunctive.

2 Select one. Remember monetary instrument is a defined term in § 1956(c)(5), whereas "funds" is undefined.

3 If the activity described in this paragraph is intended to cover more than one count, this last phrase can be redrafted in tabular form as follows: "That is, [Funds], [Monetary Instruments] in the amounts set forth below:

United States Attorney

<u>Count</u>	<u>Approximate Dollar Amounts</u>
I.	\$ _____
II.	\$ _____
III.	\$ _____